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NEC Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: OPTICAL DISK DRIVE PRODUCTS
ANTITRUST LITIGATION

Master File No. 3:10-md-02143-RS

MDL No. 2143

This Document Relates to:

Individual Case Nos. 3:13-cv-4991-RS; 3:13-cv-05370-RS

Acer America Corporation, et al., v. Lite-On IT Corporation, et al., No. 3:13-cv-4991-RS

Hewlett-Packard Company v. Toshiba Corporation, et al., No. 3:13-cv-05370-RS

DECLARATION OF JEANIFER E. PARSIGIAN IN SUPPORT OF NEC CORPORATION'S MOTION FOR SUMMARY JUDGMENT BASED UPON INSUFFICIENCY OF THE EVIDENCE AND WITHDRAWAL

1 I, Jeanifer E. Parsigian, declare and state as follows:

2 1. I am a lawyer with Winston & Strawn LLP, counsel for Defendant NEC Corporation
3 in the above-captioned matter. I am a member of the bar of this Court. Except as otherwise noted, I
4 have personal knowledge of the facts stated herein and, if called as a witness, I could and would
5 competently testify thereto.

6 2. I submit this declaration in support of NEC Corporation's Motion for Summary
7 Judgment Based Upon Insufficiency of the Evidence and Withdrawal.

8 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Expert Rebuttal Report
9 of Michael P. Smith, Ph.D., dated April 3, 2017. This exhibit has been filed under seal pursuant to
10 the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection
11 with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information
12 designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in
13 this action (MDL ECF Nos. 923, 629, 1605).

14 4. Attached hereto as **Exhibit 2** is a true and correct copy of the NEC Corporation and
15 Sony Corporation Memorandum of Understanding, Bates labeled NECODD00011095 –
16 NECODD00011104. This exhibit has been filed under seal pursuant to the Stipulation and Order
17 Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment
18 and Daubert Motions (MDL ECF No. 2322) as it contains information designated as "Confidential"
19 or "Confidential – Restricted" under the applicable protective orders in this action (MDL ECF Nos.
20 923, 629, 1605).

21 5. Attached hereto as **Exhibit 3** is a true and correct copy of an NEC press release titled
22 "Sony and NEC Sign Definitive Agreement to Establish a Joint Venture in the Optical Disk Drive
23 Business," available at <http://www.nec.co.jp/press/en/0602/2701.html>, and dated February 27, 2006.

24 6. Attached hereto as **Exhibit 4** is a true and correct copy of a Sony press release titled
25 "Sony and NEC Sign Definitive Agreement to Establish a Joint Venture in the Optical Disk Drive
26 Business," available at <https://www.sony.net/SonyInfo/News/Press/200602/06-017E/>, and dated
27 February 27, 2006.

7. Attached hereto as **Exhibit 5** is a true and correct copy of NEC Corporation's Supplemental Narrative Responses to Plaintiffs' Joint Notice of Deposition of Defendant NEC Corporation, dated March 22, 2013. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

8. Attached hereto as **Exhibit 6** is a true and correct copy of the February 27, 2006 Joint Venture Agreement between Sony Corporation and NEC Corporation, Bates labeled NECODD00002270. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

9. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the Deposition of Junsuke (James) Mikami, taken November 15-16, 2016. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

10. Attached hereto as **Exhibit 8** is a true and correct copy of a document Bates labeled NECODD00006581 – NECODD00006583. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

11. Attached hereto as **Exhibit 9** is a true and correct copy of a document Bates labeled NECODD00004074 – NECODD00004075. This exhibit has been filed under seal pursuant to the

1 Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with
 2 Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information
 3 designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in
 4 this action (MDL ECF Nos. 923, 629, 1605).

5 12. Attached hereto as **Exhibit 10** is a true and correct copy of a document Bates labeled
 6 NECODD00006051 – NECODD00006053. This exhibit has been filed under seal pursuant to the
 7 Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with
 8 Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information
 9 designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in
 10 this action (MDL ECF Nos. 923, 629, 1605).

11 13. Attached hereto as **Exhibit 11** is a true and correct copy of the April 2, 2007 Asset
 12 Sale Agreement by and between NEC Corporation of America and Sony NEC Optiarc America Inc.,
 13 Bates labeled NECODD00011116 – NECODD00011163. This exhibit has been filed under seal
 14 pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in
 15 Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains
 16 information designated as “Confidential” or “Confidential – Restricted” under the applicable
 17 protective orders in this action (MDL ECF Nos. 923, 629, 1605).

18 14. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the
 19 Deposition of Glenn R. Brower, taken on October 7, 2016. This exhibit has been filed under seal
 20 pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in
 21 Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains
 22 information designated as “Confidential” or “Confidential – Restricted” under the applicable
 23 protective orders in this action (MDL ECF Nos. 923, 629, 1605).

24 15. Attached hereto as **Exhibit 13** is a true and correct copy of a Sony press release titled
 25 “Agreement to Make Sony NEC Optiarc Inc. a Wholly-Owned Subsidiary of Sony group,” available
 26 at <https://www.sony.net/SonyInfo/News/Press/200809/08-0911E/index.html>, and dated September
 27 11, 2008.

1 16. Attached hereto as **Exhibit 14** is a true and correct copy of an NEC press release
2 titled “Agreement to Make Sony NEC Optiarc Inc. a Wholly-Owned Subsidiary of Sony group,”
3 available at <http://www.nec.co.jp/press/en/0809/1101.html>, and dated September 11, 2008.

4 17. Attached hereto as **Exhibit 15** is a true and correct copy of an article from the
5 International Herald Tribune titled “Sony Invests in Blu-Ray Disc Shot Stocks,” available at
6 [http://go.galegroup.com/ps/i.do?p=STND&sw=w&u=sfpl_main&v=2.1&id=GALE%7CA18478870](http://go.galegroup.com/ps/i.do?p=STND&sw=w&u=sfpl_main&v=2.1&id=GALE%7CA184788700&it=r&asid=e86be214f6df8347a8068b5bf453de62)
7 [0&it=r&asid=e86be214f6df8347a8068b5bf453de62](http://go.galegroup.com/ps/i.do?p=STND&sw=w&u=sfpl_main&v=2.1&id=GALE%7CA184788700&it=r&asid=e86be214f6df8347a8068b5bf453de62), and dated September 12, 2008.

8 18. Attached hereto as **Exhibit 16** is a true and correct copy of an article from Electronic
9 Engineering Times titled “Japan’s High-Tech Giants Nibble At Edges of Change,” available at
10 http://www.eetimes.com/document.asp?doc_id=1169264, and dated September 15, 2008.

11 19. Attached hereto as **Exhibit 17** is a true and correct copy of an article from Jiji Press
12 titled “Sony to Fully Own Optical Disc Drive JV,” dated September 11, 2008.

13 20. Attached hereto as **Exhibit 18** is a true and correct copy of Exhibit 1509 from the
14 Deposition of Junsuke (James) Mikami, Bates labeled SOA_CIV_00312999. This exhibit has been
15 filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal
16 Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322)
17 as it contains information designated as “Confidential” or “Confidential – Restricted” under the
18 applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

19 21. Attached hereto as **Exhibit 19** is a true and correct copy of NEC Corporation’s
20 Objections and Responses to Plaintiff HP Inc.’s First Set of Interrogatories, dated December 2, 2016.

21 22. Attached hereto as **Exhibit 20** is a true and correct copy of a U.S. Department of
22 Justice press release titled “Hitachi-LG Data Storage Inc. Agrees to Plead Guilty to Participating in
23 Bid-Rigging and Price-Fixing Conspiracies Involving Optical Disk Drives,” available at
24 [https://www.justice.gov/opa/pr/hitachi-lg-data-storage-inc-agrees-plead-guilty-participating-bid-](https://www.justice.gov/opa/pr/hitachi-lg-data-storage-inc-agrees-plead-guilty-participating-bid-rigging-and-price-fixing)
25 [rigging-and-price-fixing](https://www.justice.gov/opa/pr/hitachi-lg-data-storage-inc-agrees-plead-guilty-participating-bid-rigging-and-price-fixing), and dated September 30, 2011.

26 23. Attached hereto as **Exhibit 21** is a true and correct copy of Defendant Philips & Lite-
27 On Digital Solutions Corp. & Philips & Lite-On Digital Solutions U.S.A., Inc.’s Responses to
28

1 Panasonic Corporation and Panasonic Corporation of North America's First Set of Requests for
2 Admissions, dated September 12, 2012.

3 24. Attached hereto as **Exhibit 22** is a true and correct copy of a document titled
4 "Summary of Commission Decision," available at the European Commission website [http://eur-](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1224(03)&from=EN)
5 [lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1224\(03\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1224(03)&from=EN), and dated
6 October 21, 2015.

7 25. Attached hereto as **Exhibit 23** is a true and correct copy of a document titled
8 "September, 2012 [Decisions]," available at the Taiwan Fair Trade Commission website
9 <http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=179&docid=12553>.

10 26. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the
11 Deposition of Steve Van Vorst, taken on October 14, 2016. This exhibit has been filed under seal
12 pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in
13 Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains
14 information designated as "Confidential" or "Confidential – Restricted" under the applicable
15 protective orders in this action (MDL ECF Nos. 923, 629, 1605).

16 27. Attached hereto as **Exhibit 25** is a true and correct copy of Defendant NEC
17 Corporation's First Set of Interrogatories to Acer, dated November 4, 2016.

18 28. Attached hereto as **Exhibit 26** is a true and correct copy of Defendant NEC
19 Corporation's First Set of Interrogatories to Plaintiff HP Inc., dated November 4, 2016.

20 29. Attached hereto as **Exhibit 27** is a true and correct copy of Acer's Second
21 Supplemental Responses and Objections to Defendant NEC Corporation's First Set of
22 Interrogatories, dated January 10, 2017. This exhibit has been filed under seal pursuant to the
23 Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with
24 Summary Judgment and Daubert Motions (MDL ECF Nos. 2322) as it contains information
25 designated as "Confidential" or "Confidential – Restricted" under the applicable protective orders in
26 this action (MDL Dkts. 923, 629, 1605).

27 30. Attached hereto as **Exhibit 28** is a true and correct copy of Plaintiff HP Inc.'s
28 Objections and Responses to Defendant NEC Corporation's First Set of Interrogatories, dated

December 7, 2016. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

31. Attached hereto as **Exhibit 29** is a true and correct copy of Exhibit E to Plaintiff HP Inc.’s Seventh Supplemental Objections and Responses to Defendant Panasonic Corporation’s First Set of Interrogatories, dated December 7, 2016. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

32. Attached hereto as **Exhibit 30** is a true and correct copy of a document Bates labeled HLDS_CIV0149067 – HLDS_CIV0149071.

33. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the Deposition of Michael Chang, taken on March 10, 2016. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

34. Attached hereto as **Exhibit 32** is a true and correct copy of excerpts from the Deposition of Hyun Soo (Jason) Kim, taken on October 12, 2015. This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in this action (MDL ECF Nos. 923, 629, 1605).

35. Attached hereto as **Exhibit 33** is a true and correct copy of excerpts from the Deposition of Jae-Hun (Kenny) Lee, taken on January 21, 2016. This exhibit has been filed under

1 seal pursuant to the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed
 2 in Connection with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains
 3 information designated as “Confidential” or “Confidential – Restricted” under the applicable
 4 protective orders in this action (MDL ECF Nos. 923, 629, 1605).

5 36. Attached hereto as **Exhibit 34** is a true and correct copy of excerpts from the
 6 Deposition of Alpha Tsai, taken on April 5, 2016. This exhibit has been filed under seal pursuant to
 7 the Stipulation and Order Regarding Administrative Motions to Seal Materials Filed in Connection
 8 with Summary Judgment and Daubert Motions (MDL ECF No. 2322) as it contains information
 9 designated as “Confidential” or “Confidential – Restricted” under the applicable protective orders in
 10 this action (MDL ECF Nos. 923, 629, 1605).

11 37. Attached hereto as **Exhibit 35** is a true and correct copy of Exhibit 1329 from the
 12 Deposition of Glenn R. Brower, Bates labeled SOA_DOJ_1_1664051 – SOA_DOJ_1_1664052.
 13 This exhibit has been filed under seal pursuant to the Stipulation and Order Regarding
 14 Administrative Motions to Seal Materials Filed in Connection with Summary Judgment and Daubert
 15 Motions (MDL ECF No. 2322) as it contains information designated as “Confidential” or
 16 “Confidential – Restricted” under the applicable protective orders in this action (MDL ECF Nos.
 17 923, 629, 1605).

18 I declare under penalty of perjury under the laws of the United States of America that the
 19 foregoing is true and correct.

20 DATED: June 30, 2017

WINSTON & STRAWN LLP

22 By: /s/ Jeanifer E. Parsigian
 23 Jeanifer E. Parsigian

24 Attorney for Defendant
 25 NEC CORPORATION

ATTESTATION

Pursuant to Local Civil Rule 5-1(i)(3), I hereby attest that the concurrence in the filing of this document has been obtained from each of the other signatories.

DATED: June 30, 2017

WINSTON & STRAWN LLP

By: /s/ Robert B. Pringle
Robert B. Pringle

Attorney for Defendant
NEC CORPORATION